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Attorneys for Defendants
CHURCHILL COUNTY AND
BENJAMIN TROTTER

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 MICHAEL ERWINE,

10 Plaintiff,

11 vs.

12 CHURCHILL COUNTY, a political subdivision
13 of the State of Nevada; CHURCHILL COUNTY
14 SHERIFF BENJAMIN TROTTER; and DOES 1
15 through 10 inclusive,

16 Defendants.

CASE NO. 3:18-cv-00461-RCJ-CSD

DEFENDANTS' SUPPLEMENTAL
JURY INSTRUCTIONS

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18 COME NOW Defendants, CHURCHILL COUNTY and BENJAMIN TROTTER, by and
19 through their attorneys of record, Thorndal Armstrong Delk Balkenbush & Eisinger, and in
20 accordance with the Court's Amended Order Regarding Trial (Doc. No. 143), hereby submit
21 Defendants' supplemental jury instructions.
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1 There are rules of evidence that control what can be received into evidence. When a
2 lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks
3 that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the
4 objection, the question may be answered, or the exhibit received. If I sustain the objection, the
5 question cannot be answered, and the exhibit cannot be received. Whenever I sustain an
6 objection to a question, you must ignore the question and must not guess what the answer
7 might have been. Sometimes I may order that evidence be stricken from the record and that
8 you disregard or ignore that evidence. That means when you are deciding the case, you must
9 not consider the stricken evidence for any purpose.
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Jury Instruction No. _____

Authorities: NCJI 1.13

1 There are rules of evidence that control what can be received into evidence. When a
2 lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks
3 that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the
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Jury Instruction No. _____

1 The Plaintiff seeks to establish liability against Ben Trotter for the alleged deprivation of
2 a liberty interest without adequate process under the Fourteenth Amendment of the United States
3 Constitution and Article 1, Section 8(5) of the Nevada Constitution. In order to establish this
4 claim, the plaintiff must prove the following elements by a preponderance of the evidence:

5 1. That the plaintiff was terminated from his employment in conjunction with a
6 stigmatizing statement;
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8 2. That the stigmatizing statement impaired the plaintiff's reputation for honesty or
9 morality; and,

10 3. That the stigmatizing statement was so severe as to have effectively excluded the
11 plaintiff completely from his chosen profession.
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27 Jury Instruction No. ____

28 Authorities: *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972); *Tippetts v. Kulongoski*, 567 F.3d 529, 535-36 (9th Cir. 2009) and *Blantz v. California Dep't of Corr. & Rehab., Div. of Corr. Health Care Servs.*, 727 F.3d 917, 925 (9th Cir. 2013)

1 The Plaintiff seeks to establish liability against Ben Trotter for the alleged deprivation of
2 a liberty interest without adequate process under the Fourteenth Amendment of the United States
3 Constitution and Article 1, Section 8(5) of the Nevada Constitution. In order to establish this
4 claim, the plaintiff must prove the following elements by a preponderance of the evidence:

5 1. That the plaintiff was terminated from his employment in conjunction with a
6 stigmatizing statement;
7

8 2. That the stigmatizing statement impaired the plaintiff's reputation for honesty or
9 morality; and,

10 3. That the stigmatizing statement was so severe as to have effectively excluded the
11 plaintiff completely from his chosen profession.
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28 Jury Instruction No. ____

1 Stigmatizing statements that merely cause reduced economic returns and diminished
2 prestige, but not permanent exclusion from, or protracted interruption of, gainful employment
3 within the plaintiff's trade or profession do not constitute a deprivation of liberty.
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28 Jury Instruction No. _____

Authorities: *Blantz v. California Dep't of Corr. & Rehab.,
Div. of Corr. Health Care Servs.*, 727 F.3d 917, 925 (9th
Cir. 2013)

1 Stigmatizing statements that merely cause reduced economic returns and diminished
2 prestige, but not permanent exclusion from, or protracted interruption of, gainful employment
3 within the plaintiff's trade or profession do not constitute a deprivation of liberty.
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28 Jury Instruction No. _____

1 If you find that the Defendants made a stigmatizing statement about the plaintiff, the
2 plaintiff must also prove the following elements by a preponderance of the evidence:

- 3 1. That the accuracy of the charge is contested;
- 4 2. That there is some public disclosure of the false, stigmatizing charge;
- 5 3. That the charge was made in connection with the plaintiff's termination from
6 employment;
- 7 4. That the employer failed to allow the plaintiff an opportunity to refute the veracity
8 of the charge; and,
- 9 5. That the plaintiff sustained damages as a result of the defendants' conduct.
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28 Jury Instruction No. ____

Authorities: *Mustafa v. Clark County Sch. Dist.*, 157 F.3d
1169, 1179 (9th Cir. 1998).

1 If you find that the Defendants made a stigmatizing statement about the plaintiff, the
2 plaintiff must also prove the following elements by a preponderance of the evidence:

- 3 1. That the accuracy of the charge is contested;
- 4 2. That there is some public disclosure of the false, stigmatizing charge;
- 5 3. That the charge was made in connection with the plaintiff's termination from
6 employment;
- 7 4. That the employer failed to allow the plaintiff an opportunity to refute the veracity
8 of the charge; and,
- 9 5. That the plaintiff sustained damages as a result of the defendants' conduct.
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Jury Instruction No. _____

1 In order to establish a claim of defamation, the plaintiff must prove the following
2 elements by a preponderance of the evidence:

- 3 1. That Ben Trotter made a false and defamatory statement of fact concerning the
4 plaintiff;
5 2. An unprivileged publication of this statement was made to a third person;
6 3. That Ben Trotter made the statement with knowledge of its falsity or reckless
7 disregard for its truth; and,
8 4. That the plaintiff sustained actual damages as a result of the statement.
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28 Jury Instruction No. _____

Authorities: *Posadas v. City of Reno*, 109 Nev. 448, 453-454, 851 P.2d 438, 442-43 (1993) and NJI 6.10

1 In order to establish a claim of defamation, the plaintiff must prove the following
2 elements by a preponderance of the evidence:

- 3 1. That Ben Trotter made a false and defamatory statement of fact concerning the
4 plaintiff;
5 2. An unprivileged publication of this statement was made to a third person;
6 3. That Ben Trotter made the statement with knowledge of its falsity or reckless
7 disregard for its truth; and,
8 4. That the plaintiff sustained actual damages as a result of the statement.
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28 Jury Instruction No. _____

1 A defamatory communication is made in reckless disregard of its falsity if the defendant
2 entertained serious doubts as to the truth of the communication or had a high degree of
3 awareness of the communication's probable falsity.
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28 Jury Instruction No. _____

Authorities: *Posadas v. City of Reno*, 109 Nev. 448, 454,
851 P.2d 438, 443 (1993)

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Jury Instruction No. _____

1 It is the duty of the Court to instruct you about the measure of damages. By instructing
2 you on damages, the Court does not mean to suggest for which party your verdict should be
3 rendered.

4 If you find for the plaintiff, you must determine the plaintiff's damages. The plaintiff has
5 the burden of proving his damages by a preponderance of the evidence. Damages means the
6 amount of money that will reasonably and fairly compensate the plaintiff for any injury you find
7 was caused by the defendants. You should consider the following:

9 The reasonable value of the damage to the plaintiff's reputation.

10 It is for you to determine what damages, if any, have been proved.

11 Your award must be based upon evidence and not upon speculation, guesswork or
12 conjecture.
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Jury Instruction No. _____

Authorities: NCJI 5.1

1 It is the duty of the Court to instruct you about the measure of damages. By instructing
2 you on damages, the Court does not mean to suggest for which party your verdict should be
3 rendered.

4 If you find for the plaintiff, you must determine the plaintiff's damages. The plaintiff has
5 the burden of proving his damages by a preponderance of the evidence. Damages means the
6 amount of money that will reasonably and fairly compensate the plaintiff for any injury you find
7 was caused by the defendants. You should consider the following:
8

9 The reasonable value of the damage to the plaintiff's reputation.

10 It is for you to determine what damages, if any, have been proved.

11 Your award must be based upon evidence and not upon speculation, guesswork or
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Jury Instruction No. _____

1 Verdict forms have been prepared for you. After you have reached unanimous agreement
2 on a verdict, your foreperson should complete that verdict form which reflects your
3 deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.
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Jury Instruction No. _____

Authorities: NCJI 3.5 (modified to reflect plural verdict forms to be presented to jury).

Verdict forms have been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete that verdict form which reflects your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

Jury Instruction No. _____

1 In a §1983 action, the plaintiff must demonstrate that the defendants' conduct was the
2 cause of the claimed injury.
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28 Jury Instruction No. _____

Authorities: *Harper v. City of Los Angeles*, 533
F.3d 1010, 1026 (9th Cir. 2008); *see also*, comments
to NCJI 9.2

1 In a §1983 action, the plaintiff must demonstrate that the defendants' conduct was the
2 cause of the claimed injury.

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Jury Instruction No. _____

1 DATED this 10th day of February, 2022.

2 THORNDAL ARMSTRONG
3 DELK BALKENBUSH & EISINGER

4 By: 

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6 State Bar No. 6227
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8 Reno, Nevada 89509
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11 Attorneys for Defendants
12 Churchill County and
13 Benjamin Trotter
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **DEFENDANTS'**

SUPPLEMENTAL JURY INSTRUCTIONS to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the

United States mail at Reno, Nevada.

☒ United States District Court, District of Nevada CM/ ECF (Electronic Case Filing)

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

Luke Busby, Esq.
316 California Ave., #82
Reno, NV 89509
Attorney for Plaintiff

DATED this 10 day of February, 2022.



An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER